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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,685	02/03/2002	Aleksandar Susnjar		3106

30379 7590 08/19/2004

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CANADA

EXAMINER

VERBRUGGE, KEVIN

ART UNIT	PAPER NUMBER
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2188

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20040817

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Kevin Verbrugge  
Primary Examiner  
Art Unit: 2188

***Note to Applicant***

Upon further review, it was determined that some clarification of the Advisory Action mailed 7/15/04 is in order and that the following information would be useful to the Applicant in preparing a petition to reconsider the restriction requirement:

1. The response titled "Notice of Appeal and Response to Fourth Office Action" which was received on 6/3/04 (mailed by Applicant on 5/25/04) is now considered to be a proper Notice of Appeal and amendment. Appellant's Appeal Brief (dealing with the claim rejections) must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal. For purposes of Appeal, the proposed amendment will be entered. The status of the claims is as follows: claims rejected: 16-18, claims withdrawn from consideration: 1-15 and 19.
2. The "Notice of Appeal and Response to Fourth Office Action" contains a proper amendment of claims 16-18 which will be entered, but the Notice of Appeal is not a proper request for reconsideration of the restriction requirement since a restriction requirement is only petitionable, not appealable. Claim rejections are appealable. Restriction requirements are petitionable.
3. If Applicant desires to petition the restriction requirement, Applicant must file a proper petition according to 37 CFR 1.144 and 1.181, repeated here for Applicant's convenience:

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§ 1.144 Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Director to review the requirement.

Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

§ 1.181 Petition to the Director.

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions in interferences, see § 1.644.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the ex parte prosecution of an application, or in the ex parte or inter partes prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Director to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

(d) Where a fee is required for a petition to the Director the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

(e) Oral hearing will not be granted except when considered necessary by the Director.

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

(g) The Director may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

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4. Applicant is reminded of the proper form for claim amendments as discussed in 37

CFR 1.121, paragraph (c) of which is printed here for Applicant's convenience:

(c) Claims

Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) Claim listing. All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) When claim text with markings is required. All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) When claim text in clean version is required. The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original,"

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“withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment must be indicated with the status of “new” and presented in clean version, i.e., without any underlining.

(4) When claim text shall not be presented; canceling a claim.

(i) No claim text shall be presented for any claim in the claim listing with the status of “canceled” or “not entered.”

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as “canceled” will constitute an instruction to cancel the claim.

(5) Reinstatement of previously canceled claim. A claim which was previously canceled may be reinstated only by adding the claim as a “new” claim with a new claim number.

5. As further explanation of the Examiner’s position regarding the restriction requirement, Applicant is reminded of the grouping of claims:

- I. Claim 1, drawn to immediate fetching from plural heads simultaneously, classified in class 711, subclass 112.
- II. Claims 2-7 and 15, drawn to simultaneous accesses on plural surfaces, classified in class 711, subclass 112.
- III. Claims 8-14, drawn to plural heads per surface, classified in class 360, subclass 246.6.
- IV. Claims 16-18, drawn to simultaneous accesses with optimization of future accesses, classified in class 711, subclass 112.
- V. Claim 19, drawn to fine head positioning with piezo-electric mechanism, classified in class 360, subclass 78.05.

The inventions are distinct, each from the other because of the following reasons: Inventions I, II, III, IV, and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, each of the inventions has separate utility such as in systems that don't have the other inventions. None of the groups requires any of the other groups, proving that they are independent subcombinations. They may be used together, but are not required to be used together.

Group I is drawn to immediate fetching from plural heads simultaneously. This operation does not require Group II because the plural heads could be on a single surface. This operation does not require Group III because the plural heads could be on plural surfaces, with a single head per surface. This operation does not require Group IV because immediate fetching does not require optimization of future accesses. This operation does not require Group V because immediate fetching is unrelated to fine head positioning.

Group II is drawn to simultaneous accesses on plural surfaces. This operation does not require Group I because the plural heads could be on a single surface. This operation does not require Group III because simultaneous accesses could be done with a single head per surface. This operation does not require Group IV because simultaneous accesses are unrelated to optimization of future accesses. This operation does not require Group V because simultaneous accesses are unrelated to fine head positioning.



Group III is drawn to plural heads per surface. This operation does not require Group I because the plural heads could be on plural surfaces. This operation does not require Group II because the simultaneous accesses could be a with a single head per surface. This operation does not require Group IV because having plural heads is unrelated to optimization of future accesses. This operation does not require Group V because plural heads per surface is unrelated to fine head positioning.

Group IV is drawn to optimization of future accesses. This operation does not require Group I because immediate fetching is unrelated to optimization of future accesses. This operation does not require Group II because simultaneous accesses on plural surfaces is unrelated to optimization of future accesses. This operation does not require Group III because plural heads per surface is unrelated to optimization of future accesses. This operation does not require Group V because fine head positioning is unrelated to optimization of future accesses.

Group V is directed to fine head positioning. This operation does not require Group I because it is unrelated to fetching from plural heads simultaneously. This operation does not require Group II because it is unrelated to simultaneous accesses on plural surfaces. This operation does not require Group III because it is unrelated to plural heads per surface. This operation does not require Group IV because it is unrelated to simultaneous accesses with optimization of future accesses.

For these reasons and the reasons stated in the restriction requirement, the restriction requirement is deemed proper and is maintained and has been made final. If

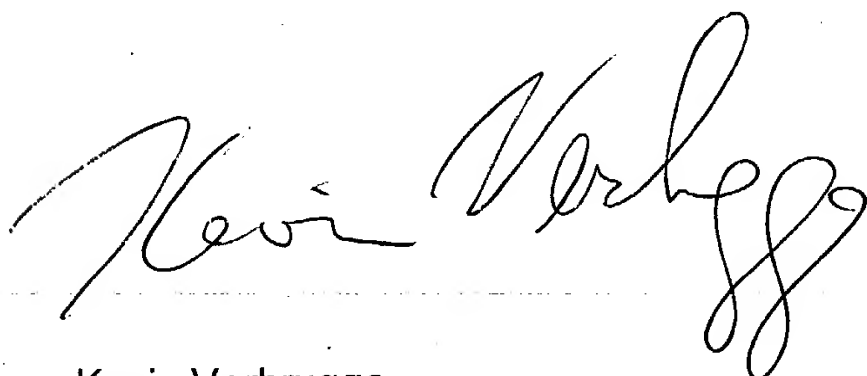
Applicant now wishes to request reconsideration of the restriction requirement, a proper petition is required.

### **Conclusion**

Any inquiry concerning a communication from the Examiner should be directed to the Examiner by phone at (703) 308-6663 before 10/28/04 and at (571) 272-4214 after 10/28/04.

Any response to this action should be labeled appropriately (serial number, Art Unit 2188, and After-Final, Official, or Draft) and mailed to Commissioner for Patents, Washington, D.C. 20231 or faxed to (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

A handwritten signature in black ink, appearing to read "Kevin Verbrugge", with a stylized, cursive script.

Kevin Verbrugge  
Primary Examiner  
Art Unit 2188